

From: Warren Havens (warren.havens@sbcglobal.net)
To: David.Senzel@fcc.gov;
Date: Tue, March 22, 2011 7:35:24 PM
Cc: feldman@fhhlaw.com; Roger.Noel@fcc.gov; Scot.Stone@fcc.gov; julius.genachowski@fcc.gov; d.c.brown@att.net; tdamari@nossaman.com; jstobaugh@telesaurus.com;
Subject: Re: Notice of impermissible ex parte communication, re contested licensing proceeding re SCRRRA.

Sent again. This time including SCRAA counsel, Mr. Feldman, that I noted below I would include.

From: Warren Havens <warren.havens@sbcglobal.net>
To: David Senzel <David.Senzel@fcc.gov>
Cc: Roger Noel <Roger.Noel@fcc.gov>; Scot Stone <Scot.Stone@fcc.gov>; julius.genachowski@fcc.gov; d brown <d.c.brown@att.net>; Tamir D Damari <tdamari@nossaman.com>; jstobaugh@telesaurus.com
Sent: Tue, March 22, 2011 7:31:43 PM
Subject: Fw: Notice of impermissible ex parte communication, re contested licensing proceeding re SCRRRA.

Mr. Senzel,

In Addition:

I will place of copy of this email and its attachment --

1. In ULS under the subject File Numbers referenced in the attached letter: 0004153701, and 000414435.
2. On ECFS in the docket referenced in the letter: WT Docket No. 10-83.

0004144435 - correction for ULS and ECFS filing.

I also include here:

- legal counsel to MCLM, Dennis Brown.
- Roger Noel of the FCC that signed the attached FOIA response.
- Scot Stone who may be handling the subject MCLM-SCRAA assignment application.
- Chairman Genachowski since the subject letter was addressed to him.
- Tamir Damir at the Nossaman firm, counsel to companies I manage listed below.

To be clear, the attached letter from Gary G. Miller is not copied to me or my companies: that does not show on the letter, and I and my companies were not served a copy by Mr. Miller, SCRAA for whom he writes, MCLM whose spectrum is subject of his letter, or anyone at the FCC upon receiving the letter.

A party subject of an impermissible ex parte presentation should not have to file and pay for an FOIA request, to get a copy of it, and get that late, as in this case. This subject letter went to the Chairman. It is hard to understand the lack of action by the FCC on this ex parte presentation, and given the history partly indicated below, this is especially disturbing.

Below I give some background here for the record, including since my companies have claims against the FCC handling of MCLM AMTS licensing and its handling of its predecessor's AMTS licenses, and this record is important for our administrative and court appeals now pending and future ones that may be taken:

(1) I once submitted a petition for declaratory ruling as to whether my companies could give to the FCC notification of public coast station construction using the same language as MCLM's predecessors used, that question posed was found by the FCC to be a collateral attack on MLMC and an impermissible ex parte presentation, since my company had at that time pending challenges to said predecessor's licenses that were sustained by said notices.

- See: DA 02-2024, August 15, 2002 (to understand what I actually asked, the declaratory ruling request needs to be read).

(2) However, when said predecessors communicated in writing with the FCC as to those same challenged notices, and which ones indicated real or false construction, none of that communication was copied to any of my companies that had pending challenges as to those notices and the underlying licenses involved. The FCC did not find any of this was impermissible ex parte communication.

- See: the FCC year 2004 "audit" of AMTS site-based station construction status. Mr. Stone has the records.

Also, when MCLM asked the FCC for a declaratory ruling regarding rule § 80.385(b) (protected service contours of site-based AMTS stations), this issue was under challenges by my companies before the FCC. However, MCLM did not

copy me on that request, nor did the FCC (not until after the FCC decision which I saw on Public Notice, and the asked for a copy of the request). (I and my companies did not disagree with the principles in the decision on that issue, but that is not the point here.)

- The decision is: *In re Request by Maritime Communications/Land Mobile, LLC for clarification of Sections 80.385...*, DA 09-793, Dated April 8, 2009.

(3) After the FCC concluded that "audit" in 2004, a copy was not provided to me until long after it was completed.

- Prior to that, in a personal meeting with Enforcement and Wireless Bureau staff (that is documented and included counsel on my side), said staff informed me that the audit *would be commenced, but at that time, the audit result was already concluded: Mobex had already been questioned in writing and responded in writing.*

- This was at the critical time right before Auction 57 that I am my companies and investors had to decide how much funds to commit, and that was based mostly on the level of encumbrance created by the MCLM predecessor (Mobex, at this point) by constructed and valid site-based AMTS stations. Mobex has stated to the FCC in Comments on this auction that all its stations were valid, and that left little for others potential bidders to bid for. That was fraudulent.

- MCLM and Mobex did not bid in this auction, apparently for reasons revealed by the audit result--

(many of the Mobex stations that, for years, Mobex asserted before the FCC were built and operated, were never built at all but had auto terminated, but these were renewed, etc.: this was fraud on the FCC and competing bidders, among other violations, and this is apparently why Mobex-MCLM could not get Clarity Gen partners capital to back them: see the Mobex licensing records on Clarity involvement then withdrawal).

- That audit result was withheld from me and my companies. At this time, I do not know who in the FCC was ultimately responsible.

- That had the effect of protecting Mobex and MCLM and disadvantaging my companies.

- That is the opposite of fair, open, competitive government auctions that Congress mandated the FCC conduct. This FCC treatment began before this point and continues to this day, but this event I note above is remarkable in itself, and to illustrate here that the FCC does not apply its ex parte rules as law on non-discriminatory basis.

- The political connections of Donald and Sandra Depriest in DC are matters of public record. MCLM, SCRAA, and other MCLM assignees main message to the FCC in its written filings in pleading cycles, and various ex parte communications regularly taking place, is smoke and mirrors as to substance, is contrary to law, but is a sanctionable well tread path: use political pressure to get around the law.

In addition, the FCC is acting contrary to demonstrated facts and law in finding, as in the attached, that for FOIA purposes Skybridge is not entitled to a fee waiver, and also using a stale determination for that purpose as if a past case always applies in a new one and new situation. As your OGC knows, Skybridge sued the FCC in US District Court on FOIA denials, including as to the matter just stated. I copy here Tamir Damari at the Nossaman law firm who is one of the attorneys handling that case for Skybridge and other matters indicated above.

Respectfully,

Warren Havens

----- Forwarded Message -----

From: Warren Havens <warren.havens@sbcglobal.net>

To: David Senzel <David.Senzel@fcc.gov>

Cc: feldman <feldman@fhhlaw.com>; jstobaugh@telesaurus.com

Sent: Tue, March 22, 2011 5:35:09 PM

Subject: Notice of impermissible ex parte communication, re contested licensing proceeding re SCRRRA

General Counsel Office

Mr. Senzel,

The letter in the attached FOIA response is a presentation in restricted proceedings on the File Numbers listed. SCRRRA had to have arranged for the letter and known that it as a presentation in said proceedings.

A member of Congress should know that also.

My companies have petition pleadings challenging the referenced File Numbers (and also oppose the transaction listed in the docket referenced in the letter). These pleadings are shown on ULS and ECFS.

Accordingly, the letter is an impermissible ex parte filing.

OFC should take appropriate action, including sanctions.

I copy here counsel to SCRAA, Mr. Feldman.

Please inform me of your decision in this matter.

Please advise me if I should provide a copy of this email and attachment to anyone not included here.

This is not a "presentation" under ex parte rules, but a notice of impermissible ex parte communication under said rules.

Respectfully,

Warren Havens

President

Skybridge Spectrum Foundation

ATLIS Wireless LLC

V2G LLC

Environmental LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

www.scribd.com/warren_havens/shelf

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510 841 2220 x 30

510 848 7797 -direct

----- Forwarded Message

From: Joyce Jones <Joyce.Jones@fcc.gov>

Date: Mon, 14 Mar 2011 13:08:48 -0400

To: <mgriffith@telesaurus.com>, Jimmy Stobaugh <jstobaugh@telesaurus.com>, Warren Havens <warren.havens@sbcglobal.net>

Cc: Joyce Jones <Joyce.Jones@fcc.gov>

Subject: FOIA 2011-183

Mr. Havens,

Attached is the response to your FOIA Request 2011-183.

Joyce Jones

----- End of Forwarded Message



Federal Communications Commission
Washington, D.C. 20554

March 14, 2011

By US mail and e-mail

Warren Havens, President
Skybridge Spectrum Foundation
c/o Mark Griffin
2509 Stuart Street
Berkeley, CA 94705

mgriffith@telesaurus.com, jstobaugh@telesaurus.com, warren.havens@sbcglobal.net

Re: FCC FOIA Control No. 2011-183

Dear Mr. Havens:

This letter responds to the Freedom of Information Act (FOIA) request included in your e-mail dated February 10, 2011, which was received by the Federal Communications Commission (FCC or Commission) FOIA Control Staff on February 11, 2011, and assigned FCC FOIA Control Number 2011-183.¹

You request records pertaining to communications or other contacts between the FCC and certain government officials regarding (1) Maritime Communications/Land Mobile LLC, Donald DePriest, Sandra DePriest, John Reardon, Mobex Communications, Inc., Mobex Network Services, LLC, or any party or entity associated with or representing these parties, and (2) any matter dealing with Auction No. 61 or the Part 80 AMTS licenses of Maritime Communications/Land Mobile LLC. We enclose one document which is responsive to your request.

As a "commercial requestor" pursuant to section 0.470(a)(1) of the Commission's rules, 47 C.F.R. § 0.470(a)(1),² you are responsible for fees that cover the full, reasonable direct cost of searching for and reviewing responsive records as well as the cost of reproducing any records released in response to your request. In this case, the fee for responding to your FOIA request is \$80.75.³

¹ See E-mail from Warren Havens, President, Skybridge Spectrum Foundation, to Freedom of Information Officer, Federal Communications Commission (Feb. 10, 2011).

² The Wireless Telecommunications Bureau has previously found that Skybridge Spectrum Foundation was not entitled to restricted fees as a "non-commercial scientific institution" or an "educational institution." See Letter from Gary Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, to Warren C. Havens, Director, Skybridge Spectrum Foundation (Oct. 15, 2007) at 3.

³ The FOIA fee schedule is based on the grade level of the employees who process the request. 47 C.F.R. §

If you believe this to be a denial of your request, you may file an Application for Review with the FCC's Office of General Counsel within 30 calendar days of the date of this letter. *See* section 0.461(j) and 1.115 of the Commission's rules, 47 C.F.R. §§ 0.461(j) and 1.115. The caption and transmitting envelope of any such application must contain "Review of Freedom of Information Act Action," and should reference FCC FOIA Control Number 2011-183.

Questions regarding the foregoing may be referred to Joyce Jones, an attorney in this Division, at 202-418-1327 or joyce.jones@fcc.gov.

Sincerely,


Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

0.467(a)(2). In this case, responding to your FOIA request required 1 hour at GS Level 15 (\$80.65/hr). In addition, 1 page was reproduced at a cost of \$0.10 (\$0.10/page). An invoice will be sent under separate cover.

GARY G. MILLER

42ND DISTRICT, CALIFORNIA

ASSISTANT WHIP AT LARGE

COMMITTEE ON FINANCIAL SERVICES

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE

BUILDING A BETTER AMERICA CAUCUS,
CHAIRMAN



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February 9, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WT Docket No. 10-83
FCC File Nos. 0004153701, 000414435

Dear Chairman Genachowski:

I am writing to urge the Commission to render a decision on the above-captioned applications filed by the Southern California Regional Rail Authority to obtain spectrum for use to provide Positive Train Control functionality.

As you may know, the Rail Safety Improvement Act of 2008 mandated development and implementation of Positive Train Control on "Class I" and passenger railroads. Congress mandated this important public safety technology shortly after the tragic railroad accident in September 2008 in Chatsworth, California. Because this technology has the potential to prevent these sorts of accidents from occurring, the Southern California Regional Rail Authority has committed to use its best efforts to comply with the mandate by December 31, 2012. However, time is of the essence due to the substantial amount of time that will be required for system design, ordering and installation of equipment, and testing. These important steps cannot occur without a grant of the applications from the Commission.

In light of the important public safety benefits that will result from the implementation of Positive Train Control technology, I respectfully urge the Commission to promptly complete the processing of the above applications. I look forward to working with you on this and other important issues in the future.

Sincerely,

GARY G. MILLER
Member of Congress

15 FEB 2011 RCUD